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Paper No. 19

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MAY 30 2003

OFFICE OF PETITIONS

In re Application of
LeRoy D. Dickson
Application No. 09/682,007
Filed: July 9, 2001
Attorney Docket No. 07032001

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 12, 2003, to revive the above-identified application. Receipt is also acknowledged of the accompanying amendment and Request for Continued Examination (RCE).

The petition is **GRANTED**.

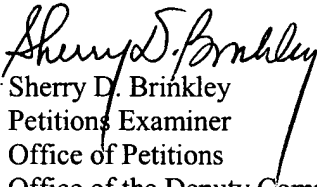
A review of the records indicates that the above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed April 30, 2002, which set a shortened statutory period for reply of three (3) months. A response, including a 1-month extension of time was filed on August 28, 2002. On October 7, 2002, an advisory action was mailed. In response, on October 29, 2002, petitioner submitted a response, as well as a request for a further 1-month extension of time. While the fee for a response within the second month is \$200, petitioner submitted \$55. Consequently, the application became abandoned on August 31, 2002.

The fee deficiency notice mailed January 6, 2003, was mailed in error. An extension of time must have been filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$55 extension of time paid on October 29, 2002 was insufficient and the extension of time submitted on November 25, 2002 was subsequent to the maximum extendable period for reply, applicant is entitled to a full refund of extension fees paid. Accordingly, \$720 will be refunded to Mr. Dickson in due course for the extension of time fees paid on October 29, 2002 for \$55; on November 25, 2002 for \$250; and on January 24, 2003 for \$415.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary. Telephone inquiries concerning this decision should be directed to Cheryl Gibson-Baylor at (703)308-5111, or in her absence, Sherry D. Brinkley at (703)305-9220.

The application file is being forwarded to Technology Center 2800, Art Unit 2872 for processing the Request for Continued Examination under 37 CFR 1.114, filed on May 12, 2003. .


Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Steven M. Perry
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